MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, November 19, 2020 - 1:00 p.m.

Present: Dale L. Schultz

Chairman (Telephonic)

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic) Commissioner (Telephonic)

Scott P. LeMarr Steven J. Krenzel

Commissioner (Telephonic)

James Ashley

Director (Telephonic)

Gaetano Testini Jason M. Porter Chief Legal Counsel (Telephonic) Deputy Director (Telephonic)

Trevor Laky

Legislative Affairs Chief/Public Information Officer (Telephonic)

Jessie Atencio

ADOSH Director (Telephonic)

Renee Pastor Lisa Padgett Victoria Kamm

Self Insurance (Telephonic) Labor Director (Telephonic) Labor Supervisor (Telephonic)

Michael Mosesso

Chief Administrative Law Judge (Telephonic)

Marilyn Carter Steve Marks

Human Resources (Telephonic) Facilities Supervisor (Telephonic)

Kara Dimas

Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Jaymie Brower (Hasa, Inc) and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of November 5, 2020 Regular Meeting Minutes and November 12, 2020 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 5, 2020 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly had not joined the call for this vote. The motion passed.

Vice Chair Hennelly joined the meeting.

Commissioner LeMarr moved to approve the Minutes of the November 12, 2020 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr and voted in favor of the motion. The motion passed. Commissioner Krenzel abstained.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a

final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2CSP20/21-0034 My Handy Helper LLC \$1,000
 - 2. 2CLP20/21-0013 HotShot Hardscape & Design LLC \$1,000
 - 3. 2CLP20/21-0028 Experienced Choice Style Landscaping LLC \$1,000
 - 4. 2CSP20/21-0042 Carlos E Juvera dba Big Boys Plumbing \$1,000
- b. Approval of Requests for Renewal of Self-Insurance Authority.
 - 1. DG Retail, LLC
 - 2. Parker-Hannifin Corporation
- Discussion and Action regarding Proposed Youth Employment Penalty.
 - \$900 A & D Pizza, Inc. DBA Barro's Pizza 1. CL-1920-0285

Ms. Dimas noted that Mr. Testini would like to remove HotShot Hardscape & Design LLC from the agenda. DG Retail LLC was also removed from the agenda as it was approved at the October 22, 2020 meeting.

Commissioner Krenzel moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Hasa, Inc.

Complaint

735 N Eleven Mile Corner Rd

Years in Business:

30

Eloy, AZ 85131

Empl. Covered by Inspection:

30

Site Location:

735 N Eleven Mile Corner Rd

Eloy, AZ 85131

Inspection No:

T3633 -1478293

Inspection Date:

06/10/2020

SERIOUS - Citation 1 - Item 1a -

a) Plant: The three chlorine gas sensors classified as chlorine safety equipment were not inspected and tested semi-annually as specified by the employer. 29 CFR 1910.119(j)(4)(i)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 1b -

- a) Bleach manufacturing plant: Annual and semi-annual maintenance and inspection procedures for the Air Padding System were not documented.
- b) Bleach manufacturing plant: Annual maintenance and inspection procedures for the Railcar Unloading System were not documented.
- c) Bleach manufacturing plant: Annual and semi-annual maintenance and inspection procedures for the Bleach Plant System were not documented.
- d) Bleach manufacturing plant: Annual maintenance and inspection procedures for the Scrubber System were not documented.
- e) Bleach manufacturing plant: The semi-annual maintenance and inspection procedure for the Chlorine Sensor System was not documented.
- f) Bleach manufacturing plant: Annual and semi-annual maintenance and inspection procedures for the Bleach Plant System were not documented.
- g) Bleach manufacturing plant: Annual and semi-annual maintenance and inspection procedures for the Instrument Air System were not documented.
- h) Bleach manufacturing plant: Semi-annual maintenance and inspection procedures for the Cooling Tower System were not documented. 29 CFR 1910.119(j)(4)(iv)

 Div. Proposal \$0.00 Formula Amt. \$2,500.00

SERIOUS - Citation 1 - Item 1c -

a) Bleach Manufacturing Plant: A chlorine gas sensor classified as chlorine safety equipment did not have the LED screen repaired after the deficiency was identified in November 2019. 29 CFR 1910.119(j)(5)

Div. Proposal - \$0.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2a –

a) Refillable bottle line: Employees who worked on the refillable bleach bottle filling and capping line were at risk of bleach splashes to the eyes, and the employees did not wear PPE which would provide splash protection to the eyes. 29 CFR 1910.132(d)(1)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2b –

a) Refillable bottle line: A tank-style eyewash mounted on the wall on the north side of the refillable bleach bottle line was empty so that it was not available for immediate emergency use. 29 CFR 1910.151(c)

Div. Proposal - \$0.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 3 -

a) Main building: Honeywell 7900 series escape mouthpiece respirators were available for emergency use for escape from the facility in the event of a chlorine gas leak, and the respirators were not inspected monthly with a certification of the inspection. 29 CFR 1910.134(h)(3)(iv)(A)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 4a -

a) Bleach bottle filling area: An energy control (lockout/tagout) procedure had not been developed for repairing leaks on the disposable bottle filler machine. 29 CFR 1910.147(c)(4)(i) Div. Proposal - \$2,500.00 Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 4b -

a) Bottling filling area: An employee who repaired leaks on the disposable bottle filling machine had not been trained concerning the company's energy control program (lockout/tagout). 29 CFR 1910.147(c)(7)(i)

Div. Proposal - \$0.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 5 -

- a) Disposable bottle filling line: Panel guards on the east side of the bottle filler carousel were not installed.
- b) Refillable bottle filling line: The ingoing nip point on the east end of the empty-bottle conveyor was not guarded.
- c) Refillable bottle filling line: The ingoing nip point on the west end of the filled-bottle conveyor was not in place.
- d) Refillable bottle filling line: The rotating lid-turning mechanisms on the bottle capping machine were not guarded. 29 CFR 1910.212(a)(1)

 Div. Proposal \$2,500.00

 Formula Amt. \$2,500.00

SERIOUS – Citation 1 - Item 6 –

a) Returnable bottle filling line. The chain drive from the conveyor motor to the roller was not guarded. 29 CFR 1910.219(f)(3)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$25,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz noted he was impressed by the extent of the employer's Process Safety Management Program ("PSMP") Chairman Schultz and Mr. Atencio discussed that most of the elements of the PSMP were in place. There were routine inspections by third parties and internally to review, update, replace or change things.

Mr. Brower, Plant Manager, has budgeted for a Plant Safety Person next year and is in the process of hiring a Plant Safety Quality Person and a Plant Engineer, to help get a firm grasp on the PSMP. Mr. Brower stated they have two Corporate Safety individuals, but all Plant Managers will be getting their own dedicated safety individual.

Mr. Brower commented that they needed an in-depth third party inspection, some of the items found in previous years were not done. He brought in the manufacturer of the system for a thorough inspection of the machine and will be bringing the machine back up to original specs in the next three months.

Mr. Atencio noted that when third party inspections are done it can be very expensive and costly.

Chairman Schultz and Mr. Brower discussed the list of items that have been, or are in the process of, being abated.

Mr. Atencio commented that PSMP from the OSHA standpoint is also part of the Risk Management Program which has to be well documented because of the release or anything else, additionally the employer is heavily regulated by the EPA and Federal OSHA.

Commissioner LeMarr moved to amend the Citation and proposed a reduction of penalties by 25% for Good Faith and abatement efforts to bring the entire system up to requirements for a total of \$11,250.00. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Mr. Brower complimented the compliance officer for his professionalism and good advice.

Chairman Schultz thanked Mr. Brower for his comments because that is the culture the Commission is trying to create, assisting employers to provide safe workplaces wherever possible.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge Positions, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1) and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Judge Mosesso has been recruiting to fill two Administrative Law Judge positions for the Tucson office. Judge Mosesso recommended two candidates. One applicant previously applied for the Phoenix position. He reviewed the hiring process and documents and ranked Candidate #1 and Candidate #2 on the list. He recommended that the Commission offer the two candidates the positions for the Tucson office.

Chairman Schultz asked the Commissioners if there was a need for an Executive Session for further discussion or if the Commissioners were comfortable with the recommendation from Judge Mosesso.

Commissioner Krenzel noted the positions were in the Tucson office and both Candidates had Phoenix addresses. Commissioner Krenzel and Judge Mosesso discussed the candidates' options for hearing coverage which is currently being covered virtually since March of 2020 which has been working well in addition to future relocation plans.

Chairman Schultz commented that it is going to be a significant improvement to balance hearing loads and be able to have substitutions when needed to overcome the geographical difference. He likes having the presence in both major metropolitan areas but also believes we are best able to serve the constituents by being able to be flexible and able to move our resources to when and where needed.

Chairman Schultz thought both candidates have excellent writing skills and thought their predictive index scores presented excellent choices for the attributes to fill the positions.

Commissioner Krenzel moved to accept Judge Mosesso's recommendation to extend offers to Candidate #1 and Candidate #2. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked everyone involved in the selection process. Judge Mosesso thanked the Commissioners and Director for the opportunity and being supportive of the division.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley followed up on the Phoenix office successfully achieving VPP Star Status. As a result of the audit, identified were some agency best practices and some recommendations for improvement. There are 90 days in which to make the recommended improvements and many of those have been taken care of. Mr. Ashley introduced Mr. Marks, the ICA Facilities Supervisor, to provide an update of corrective actions taken by the maintenance team to correct the action items, housekeeping and storage issues. Mr. Marks noted that all 22 action items have been corrected.

Chairman Schultz thanked Mr. Marks for his quick abatement on all of the issues. He also noted there is no small hazard, safety is a game of inches and seconds, those things make a difference of life and death sometimes, and most often between injury and no injury or damage and no damage, any one item could have contributed to significant issues occurring. He appreciated Mr. Marks and him team for addressing them all and doing it so quickly.

Mr. Ashley noted the comments thanking Mr. Marks and the maintenance team. During Commission meetings we hear a lot of examples of different degrees and levels of safety hazards and concerns in the workplace and thought the Commissioners would appreciate hearing about some of the items that were addressed here. Staff is wrapping up some of the other items that needed to be addressed and will be sending correspondence to ADOSH well within the 90-day time frame.

Chairman Schultz noted that when the process was started, it was about being an example that if you were going to talk the talk you need to walk the walk. He appreciated all of Mr. Ashley's efforts and the management team and Mr. Marks and his crew for responding so quickly.

Ms. Dimas confirmed Commission meeting dates through January 2021.

Ms. Dimas presented a retirement resolution for Estela Taylor, Administrative Services Officer 2 in the Administrative Law Division for 4 years of state service.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:08 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

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James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary